

Jon Jekielek, Esq. (JJ 0536)
Jekielek & Janis, LLP
153 W. 27th St., Suite 204
New York, NY 10001
Tel: 212.686.7006
Fax: 646.657.3265
*Attorneys for Plaintiff/
Counterclaim Defendant
J&N Records, LLC*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
J&N RECORDS, LLC

Plaintiff,

- against -

Case No: 1:12-CV-7265 (KBF)

**ANSWER TO COUNTERCLAIMS
AND AFFIRMATIVE DEFENSES**

PLANET RECORDS a Division of
FERRANTE PRODUCTIONS, S.R.L.,
ROBERTO FERRANTE, and SCORPIO MUSIC
Defendants.

-----X
Plaintiff J&N Records, LLC. (“J&N” or “Plaintiff” or “Counterclaim Defendant”) by and through its attorneys, Jekielek and Janis, LLP, as and for its Answer and Affirmative Defenses to the Counterclaims of defendant Planet Records, a Division of Ferrante Productions, S.R.L. (“Planet Records” or “Defendant” or “Counterclaim Plaintiff”), alleges as follows:

COUNTERCLAIMS

129. Upon information and belief, Counterclaim Defendant admits the truth of the allegations contained in this corresponding paragraph of the Complaint and in addition to conducting business in Italy, the Counterclaim Plaintiff conducts business in the New York County in the State of New York.

130. Counterclaim Defendant admits the truth of the allegations contained in this corresponding paragraph of the Complaint. In addition to having offices in Miami Florida, the Counterclaim Defendant also maintains an office in the County of New York and the State of New York

1. J&N's Breach of Contract

A. J&N's Failure to Issue Invoices and Tax Documents

131. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

132. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

133. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

134. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

B. J&N's Unlawfully Sold Songs Licensed to Planet Records

135. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint. Moreover, the ALA and DLA are written documents that speak for themselves, and Counterclaim Defendant respectfully refers the Honorable Court to the writing for the contents therein.

136. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint. Moreover, the ALA and DLA are written documents

that speak for themselves, and Counterclaim Defendant respectfully refers the Honorable Court to the writing for the contents therein.

137. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint. Moreover, the ALA and DLA are written documents that speak for themselves, and Counterclaim Defendant respectfully refers the Honorable Court to the writing for the contents therein.

138. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

139. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

AS AND FOR A FIRST COUNTERCLAIM

Breach of Contract

140. Counterclaim Defendant repeats, realleges and reiterates each and every response to the counterclaim allegations contained in this Answer with the same force and effect as if more fully set forth herein at length.

141. Counterclaim Defendant admits the truth of the allegations contained in this corresponding paragraph of the Complaint.

142. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

143. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

144. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

145. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

146. Counterclaim Defendant denies the truth of the allegations contained in this corresponding paragraph of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Counterclaims fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Counterclaim Plaintiff has not brought its counterclaims within the specified statute of limitations for a claim for breach of contract, six (6) years, and therefore is barred from bringing any all legal action in connection with any purported breaches by Counterclaim Defendant of the SLA, ALA and DLA that occurred on or before November 8, 2007.

THIRD AFFIRMATIVE DEFENSE

Counterclaim Plaintiff had and has a duty to mitigate its losses and has failed to take reasonable measures to mitigate it losses.

FOURTH AFFIRMATIVE DEFENSE

Counterclaim Plaintiff acted in bad faith and breached the covenants of good faith and fair dealing implicit in the agreements by and between Counterclaim Plaintiff and Counterclaim Defendant and a result thereof has caused its own damages, if any.

FIFTH AFFIRMATIVE DEFENSE

Counterclaim Plaintiff's calculation of damages alleged to be due and owing in the Complaint is false and/or inaccurate.

SIXTH AFFIRMATIVE DEFENSE

Counterclaim Plaintiff breached the agreements by and between the parties, thereby relieving Counterclaim Defendant of any further obligations thereunder.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaim Plaintiff's own wrongful conduct caused damages to J&N and, therefore, any amount recoverable by the Counterclaim Plaintiff as against Counterclaim Defendant should be diminished/reduced in proportion to Counterclaim Plaintiff's own culpable conduct and/or monies received as a result of such conduct.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaim Plaintiff failed to meet a condition precedent to bringing any claim for breach of contract specifically Counterclaim Plaintiff failed to provide Counterclaim Defendant with proper notice of and an opportunity to cure its alleged breaches of the agreements (the ALA, SLA and/or DLA) by and between the parties.

NINTH AFFIRMATIVE DEFENSE

Counterclaim Plaintiff's claims are barred by the doctrines of waiver, ratification, laches and/or collateral estoppel.

TENTH AFFIRMATIVE DEFENSE

Counterclaim Plaintiff's claims are barred by the doctrine of unjust enrichment.

WHEREFORE, Counterclaim Defendant J&N Records demands judgment dismissing the Counterclaims in their entirety, granting it relief in connection with its affirmative defenses,

and for all attorneys' fees, costs and disbursements of this action, and for such further relief as this Court deems just and proper.

Dated: New York
December 4, 2013

JEKIELEK & JANIS, LLP

By: 

By: Jon D. Jekielek (NJ-0536)

153 West 27th Street, Suite 204

New York, NY 10001

Tel: (212) 686-7006

Fax: (646) 657-3265

Attorneys for Plaintiff/Counterclaim

Defendant J&N Records, LLC